

MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 2003

Great-West Life & Annuity Insurance Company
8515 East Orchard Road
Greenwood Village, Colorado 80111

NAIC Group Code 769
NAIC Company Code 68322

EXAMINATION PERFORMED BY
DIVISION OF INSURANCE STAFF
COLORADO DEPARTMENT OF REGULATORY AGENCIES
STATE OF COLORADO

**Great-West Life & Annuity Insurance Company
8515 East Orchard Road
Greenwood Village, CO 80111**

**LIMITED MARKET CONDUCT
EXAMINATION REPORT
as of
December 31, 2003**

**Examination Performed by
Jeffory A. Olson, CIE, AIRC, ALHC
David M. Tucker, AIE, FLMI, ACS
Paula M. Sisneros, AIS**

State Market Conduct Examiners

July 13, 2004

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner:

This limited market conduct examination of Great-West Life & Annuity Insurance Company (the Company) was conducted pursuant to Sections 10-1-203 and 10-3-1106, Colorado Revised Statutes, which authorizes the Insurance Commissioner to examine life and annuity insurance companies. We examined the Company's records at its corporate office located at 8515 East Orchard Road, Greenwood Village, Colorado 80111. The market conduct examination covered the period from January 1, 2003, through December 31, 2003.

The following market conduct examiners respectfully submit the results of the examination.

Jeffory A. Olson, CIE, AIRC, ALHC

David M. Tucker, AIE, FLMI, ACS

Paula M. Sisneros, AIS

**MARKET CONDUCT
EXAMINATION REPORT
OF
GREAT-WEST LIFE & ANNUITY COMPANY**

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. COMPANY PROFILE	5
II. PURPOSE AND SCOPE OF EXAMINATION	6
III. EXAMINERS' METHODOLOGY	8
IV. EXAMINATION REPORT SUMMARY	12
V. FACTUAL FINDINGS	14
E. Underwriting - Contract Forms.....	15
G Underwriting - New Business/Replacements.	27
H. Underwriting - Cancellations/Non-Renewals/Declinations	38
VI. SUMMARY OF ISSUES AND RECOMMENDATIONS.....	40
VII. EXAMINATION REPORT SUBMISSION.....	41

COMPANY PROFILE

The Company provided the following history:

GWL&A Financial, Inc. (GWL&A Financial) was incorporated in the State of Delaware on September 16, 1998 to act as a holding company for Great-West Life & Annuity Insurance Company (GWL&A). GWL&A is a stock life insurance company originally organized on March 28, 1907 and now domiciled in Colorado. GWL&A, a Colorado licensed insurer since July 16, 1957, is currently licensed in all states (excluding New York) as well as, the District of Columbia, Guam, Puerto Rico & the US Virgin Islands. The corporate office is located at 8515 East Orchard Road, Greenwood Village, CO 80111. GWL&A offers customers a full range of health care plans, life and disability insurance, annuities and retirement savings products and services.

GWL&A Financial is indirectly owned by Great-West Lifeco Inc. (Great-West Lifeco), a Canadian holding company. Great-West Lifeco operates in the U.S. through its principal subsidiaries, GWL&A, and The Canada Life Assurance Company (CLAC), and in Canada through its subsidiaries, The Great-West Life Assurance Company, London Life Insurance Company and CLAC. Great-West Lifeco is a subsidiary of Power Financial Corporation (Power Financial), a Canadian holding company with substantial interests in the financial services industry. Power Corporation of Canada (Power Corporation), a Canadian holding and management company, has voting control of Power Financial. Mr. Paul Desmarais, through a group of private holding companies that he controls, has voting control of Power Corporation.

GWL&A offers customers a full range of health care plans, life and disability insurance, annuities and retirement savings products and services. The company is a niche market player in the individual insurance and annuity markets, where it actively sells in the corporate-owned life insurance market, and distributes insurance and annuities in the financial institutions market. While the company no longer sells insurance and annuities in the traditional agent/broker channels, we have a block of policies that we continue to service.

On September 1, 2003 the Company announced a new name for use in connection with the defined contribution products and services of the Company's Financial Services division. The new brand name, Great-West Retirement Services, is intended to bring together multiple products and services under one brand name and to capitalize on the brand recognition of the Company's name.

Written Premium as of 12-31-03:

Life - \$ 38,051,000

Annuity - \$ 213,973,000

Market Share:

Life – 2.24%

Annuity – 6.32%

PURPOSE AND SCOPE OF EXAMINATION

State market conduct examiners with the Colorado Division of Insurance (DOI), in accordance with Colorado insurance law, sections 10-1-201, 10-1-203, 10-1-204 and 10-3-1106, C.R.S., that empowers the Commissioner to require any company, entity, or new applicant to be examined, reviewed certain business practices of Great-West Life & Annuity Insurance Company. The findings in this report, including all work products developed in producing it, are the sole property of the Colorado Division of Insurance.

The purpose of the limited examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to life and annuity insurance companies. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

Examiners conducted the examination in accordance with procedures developed by the Colorado Division of Insurance, based on model procedures developed by the National Association of Insurance Commissioners. They relied primarily on records and materials maintained by the Company. The limited market conduct examination covered the period from January 1, 2003, through December 31, 2003.

The examination included review of the following:

- Company Operations/Management;
- Advertising and Sales;
- Contract Forms;
- New Business/Replacements;
- Cancellations/Declinations/Terminations; and
- Claims Handling;

The final exam report is a report written by exception. References to additional practices, procedures, or files that did not contain improprieties, were omitted. Based on review of these areas, comment forms were prepared for the Company identifying any concerns and/or discrepancies. The comment forms contain a section that permits the Company to submit a written response to the examiners' comments.

For the period under examination, the examiners included statutory citations and regulatory references as they pertained to life and annuity insurance companies. Examination findings may result in administrative action by the Division of Insurance. Examiners may not have discovered all unacceptable or non-complying practices of the Company. Failure to identify specific Company practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any life or annuity insurance company.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination, and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's business practices to determine compliance with Colorado insurance laws and Colorado regulations. For this examination, special emphasis was given to and the laws and regulations as shown in Exhibit 1.

Exhibit 1

Law/Regulation	Concerning
Section 10-1-101-10-1-130	General Provisions
Section 10-1-203	Authority, scope, and scheduling of examinations.
Section 10-1-204	Conduct of Examinations
Section 10-2-407	License- definitions of lines of insurance – authority.
Section 10-2-605	Misleading advertising.
Section 10-2-702	Commissions
Section 10-2-704	Fiduciary responsibilities.
Section 10-2-1004	Required contract provisions.
Section 10-2-1005	Duties of insurers.
Section 10-3-105	Certificate of authority to do business – companies prohibited.
Section 10-3-109	Reports, statements, assessments, and maintenance of records – publication – penalties for late filing, late payment or failure to maintain.
Section 10-3-535	Proof of claim.
Section 10-3-1101-10-3-1104.5	Unfair Competition - Deceptive Practices
Section 10-7-101-10-7-115	General
Section 10-7-201 – 10-7-207	Group Life Insurance
Section 10-7-301 – 10-7-316	Standard Nonforfeiture and Valuation Act
Section 10-7-401 – 10-7-405	Variable Contracts
Section 10-7-501 – 10-7-510	Standard Nonforfeiture Law for Individual Deferred Annuities
Regulation 1-1-4	Maintenance of Offices in this State
Regulation 1-1-7 (Revised)	Market Conduct Record Retention
Regulation 1-1-8	Penalties and Timelines Concerning Division Inquires and Document Requests
Regulation 1-2-9	Fees Charged by Producers
Regulation 1-2-10	Concerning the Regulation of Insurance Producers by the Colorado Division of Insurance: Colorado Producer Licensing Model Act
Regulation 2-1-7	Concerning Issuance of a Certificate of Authority
Regulation 3-1-3	Concerning Actuarial Opinions
Regulation 3-1-8	Concerning Actuarial Opinions and Memorandums for Life Companies
Regulation 3-1-9	Minimum Reserve Standards for Individual and Group Health Insurance Companies

Regulation 4-1-1	Variable Annuity Contracts
Regulation 4-1-2	Advertising and Sales Promotion of Life Insurance
Regulation 4-1-3	Variable Life Insurance
Regulation 4-1-4	Replacement of Life Insurance or Annuity Contracts
Regulation 4-1-5	Permitting Same Minimum Nonforfeiture Standards for Men and Women Insureds Under 1980 CSO and 1980 CET Mortality Tables
Regulation 4-1-6	Permitting Smoker/Nonsmoker Mortality Tables for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits
Regulation 4-1-7	For Recognizing a New Annuity Mortality Table for Use in Determining Liabilities for Annuities
Regulation 4-1-8	Concerning the Disclosure Requirements for Life Insurance Illustrations
Regulation 4-1-9	Valuation of Life Insurance Policies Model Regulation (Including the Introduction and Use of New Select Mortality Factors)
Regulation 4-1-10	Recognition of the 2001 CSO Mortality Table for use in determining minimum reserve
Regulation 4-2-9	Concerning Non-Discriminatory Treatment of Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Related Illness by Issuers of Life and Health Insurance
Regulation 6-2-1	Complaint Record Maintenance

Company Operations/Management

The examiners reviewed Company management and administrative controls, the Certificate of Authority, record retention, underwriting guidelines, and timely cooperation with the examination process. Additionally, the examiners reviewed the servicing of the following files for compliance with statutory requirements:

- Fifty (50) in-force life policies; and
- Fifty (50) in-force annuity contracts; and
- Fifty (50) in-force corporate owned life insurance (COLI) policies; and
- The entire population of four (4) corporate owned life insurance (COLI) loans.

Advertising and Sales

The examiners reviewed all advertising and marketing material used by the Company during the examination period of January 1, 2003 through December 21, 2003 for compliance with statutory requirements.

Contract Forms

The examiners reviewed the following forms that were in use during the examination period of January 1, 2003 through December 31, 2003:

- The Company's policy forms; and
- The Company's riders attached to the above policy forms; and
- The Company's application forms; and
- The Company's delivery receipts, buyer's guide, privacy notice and guaranty association notice.

New Business/Replacements

For the period January 1, 2003 through December 31, 2003, the examiners reviewed the following for compliance with statutory requirements and contractual obligations:

- The entire population of four (4) annuity new business application files; and
- The entire population of thirty-four (34) annuity replacement files; and
- Fifty (50) life new business files; and
- The entire population of forty (40) life replacement files.

Cancellations/Declinations/Terminations

For the period January 1, 2003 through December 31, 2003, the examiners reviewed the following for compliance with statutory requirements and contractual obligations:

- Fifty (50) life termination files; and
- Fifty (50) life declination files; and
- The entire population of eighteen (18) annuity termination files.

Claims

For the period January 1, 2003 through December 31, 2003, the examiners reviewed the following for compliance with statutory requirements and contractual obligations:

- The entire population of seventeen (17) paid life claims; and
- The entire population of eleven (11) paid annuity claims; and
- The entire population of one (1) denied life claim.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of twelve (12) findings in which the Company did not appear to be in compliance with Colorado Statutes and Regulations. The following is a summary of the examiners' findings and recommendations.

Operations/Management: There were no issues cited in this area of the exam.

Marketing and Sales: There were no issues cited in this area of the exam.

Contract Forms: The examiners identified six (6) areas of concern in their review of the Company's contract forms.

- Failure, in some instances, to include a fraud statement or to include a fraud statement that is substantially similar to that required by Colorado insurance law.
- Failure to provide an incontestability provision that addresses non-payment of premiums.
- Failure to provide the required statements relating to the death benefit and suitability questions as required by Colorado insurance law.
- Failure to provide a provision that allows for a fixed settlement option.
- Failure to provide full disclosure to the policy owner regarding the assets of the separate account and the liability of the general account.
- Failure to provide an authorization to disclose nonpublic personal health information that complies with Colorado insurance law.

New Business/Replacements: There were five (5) areas of concern identified during the review of the new business and replacement files.

- Failure, in some instances, to provide a replacement notice that complies with Colorado insurance law.
- Providing, in some instances, misleading information regarding the free-look period allowed under a replacement policy.
- Failure, in some instances, to allow credit under the replaced policy or contract's incontestability and suicide period on an internal replacement.
- Failure, in some instances, to notify an existing insurer of an intended replacement within the time period allowed by Colorado insurance law.

- Failure, in some instances, to provide the thirty (30) day right to return the replacing policy or contract.

Cancellations/Declinations/Terminations There was one (1) area of concern identified during the review of the cancellation, declination and termination files.

- Failure to send a letter and notice pertaining to the replacement of an existing policy.

Claims: There were no issues cited in this section of the exam.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

MARKET CONDUCT EXAMINATION REPORT

FACTUAL FINDINGS

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

UNDERWRITING
CONTRACT FORMS
FINDINGS

Issue E1: Failure, in some instances, to include a fraud statement, or to include a fraud statement that is substantially similar to that required by Colorado insurance law.

Section 10-1-102, C.R.S., Definitions, states:

- (12) “Insurance” means a contract whereby one, for consideration, undertakes to indemnify another or to pay a specified or ascertainable amount or benefit upon determinable risk contingencies, and includes annuities.

Section 10-1-128, C.R.S., Fraudulent insurance act – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, states:

- (6)(a) Each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

“It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.”

It appears that Company is not in compliance with Colorado insurance law in that some of its application and claim forms contain a fraud statement that is not substantially the same as the statement required by Colorado insurance law. The statement contained on the Company’s application forms reads as follows:

ANY PERSON WHO KNOWINGLY AND WITH THE INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

The examiners noted that some of the of the Company’s application forms contain an incorrect fraud statement and some of its application forms do not contain any fraud statement.

No Fraud Statement:

F746
J300
J355app
J445app
J350app
J350app/psv
J434app

Incorrect Fraud Statement:

J277app
J277app-02t-q
J317app
J317app-02-c-z
J317app-03-z
J317appRev2-z
J444MMFapp
J340app
J340app-02t
J340app-02t-q
J340app-03

Additionally, the Company's "Claimant's Statement" contains a fraud statement that reads as follows:

Filing a statement of claim containing any false, incomplete, or misleading information with intent to defraud or deceive any insurance company is considered to be a felony in some states.

Form

LIFE INSURANCE APPLICATION/J277app
Life Insurance Application/J277app-02t-q
LIFE INSURANCE APPLICATION/J317app
Life Insurance Application/ J317app-02-c-z
Life Insurance Application/J317app-03-z
Life Insurance Application/J317appRev2-z
Variable Annuity Application/J444MMFapp
Life Insurance Application/J340app
Life Insurance Application/J340app-02t
Life Insurance Application/J340app-02t-q
Life Insurance Application/J340app-03
Flexible Premium Variable Life Insurance Application/J350app
Flexible Premium Variable Life Insurance Application/J350app/psv
Application/J300
Application/F746
Application/J434app
Application/J355app
Application/J445app
Claimant's Statement

Dated

Not Dated
Not Dated
Not Dated
Not Dated
Not Dated
Not Dated
(06/03)
(01)
Not Dated
Not Dated
Not Dated
Not Dated
Not Dated
Not Dated
Not Dated
(Rev. 6/99)
(8/03)
(99)
Not Dated

Recommendation No. 1:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-1-128, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised the fraud warnings to reflect language that is substantially the same as the wording required by Colorado insurance law.

Issue E2: Failure to provide an incontestability provision that addresses non-payment of premiums.

Section 10-2-102, C.R.S., Life insurance policies - requirements, states:

- (1) It is unlawful for any foreign or domestic life insurance company to issue or deliver in this state any life insurance policy unless the same contains the following provisions:
 - (b) A provision that the policy shall constitute the entire contract between the parties and *shall be incontestable after it has been in force during the lifetime of the insured for two years from its date, except for nonpayment of premiums* (emphasis added) and except for violation of the conditions of the policy relating to naval and military service in time of war or other prohibited risks, and, at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted...

It appears that the Company is not in compliance with Colorado insurance law in that its forms fail to provide an incontestability provision that addresses non-payment of premiums. The Company's forms state either:

How long is the incontestability period?

INCONTESTABILITY

This policy will not be contested on the basis of misrepresentation after it has been in force during the Insured's lifetime for 2 years from the Issue Date. [However, this 2 year limit does not apply to any rider attached to this policy which provides;

- (a) benefits in the event of disability; or
- (b) additional insurance in the even of accidental death.

If the face amount is increased, the amount of the increase will in like manner be incontestable after it has been in force during the Insured's lifetime for 2 years from the effective date of the increase.]

Or:

INCONTESTABILITY PROVISION

This policy will not be contested on the basis of misrepresentation after it has been in force during the Insured's lifetime for 2 years from the Issue Date. However, this 2 year limit does not apply to any rider attached to this policy which provides;

- (c) benefits in the event of disability; or
- (d) additional insurance in the even of accidental death.

[If the face amount is increased, the amount of the increase will in like manner be incontestable after it has been in force during the Insured's lifetime for 2 years from the effective date of the increase.]

<u>Form</u>	<u>Dated</u>
WHOLE LIFE PAID-UP AT AGE 100/J277	(01)
INDIVIDUAL FLEXIBLE PREMIUM VARIABLE UNIVERSAL LIFE INSURANCE/J350a	(98)
INDIVIDUAL FLEXIBLE PREMIUM VARIABLE UNIVERSAL LIFE INSURANCE/J355C	(98)
SINGLE PREMIUM INTEREST SENSITIVE WHOLE LIFE/J440 FLEXIBLE PREMIUM ADJUSTABLE LIFE INSURANCE UNIVERSAL LIFE/J445	No Date
TERM LIFE INSURANCE/J348	(97)
TERM LIFE INSURANCE/J340	(01)

Recommendation No. 2:

Within thirty (30) days the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-2-102, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised all affected forms to include a correct and complete incontestability provision to ensure compliance with Colorado insurance law.

Issue E3: Failure to provide the required statements relating to the death benefit and suitability questions as required by Colorado insurance law.
--

Regulation 4-1-3, effective July 1, 1994, Variable Life Insurance Policies, promulgated under the authority of Sections 10-1-109 and 10-7-405, C.R.S., states:

VI. Insurance Policy Requirements

B. Applications:

The application for a variable life insurance policy shall contain:

1. a prominent statement in either contrasting color or in boldface type *that the death benefit may be variable or fixed under specified conditions;*
2. a prominent statement in either contrasting color or in boldface type that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees);
3. *questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.*
[Emphases added.]

It appears that Company is not in compliance with Colorado insurance law in that its variable life insurance application forms do not contain the required statements relating to death benefit and suitability questions as required by Colorado insurance law. The examiners found no suitability questions on the Company's variable life insurance application forms and no statement regarding the variability of the death benefit.

The Company's forms state:

I understand that all amounts are based on the investment experience of the investment divisions and are not guaranteed as to amount; they are variable and may increase or decrease accordingly.

And;

I understand that amounts allocated to a Sub-Account are variable and are not guaranteed as to dollar amount. All payments and values based on the investment experience of the investments division are variable, may increase or decrease accordingly, and are not guaranteed as to amount.

Form

Dated

Flexible Premium Variable Life Insurance Application/J350app

No Date

Flexible Premium Variable Life Insurance Application/J350app/psv

No Date

Recommendation No. 3:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-3. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its forms to include statements relating to the death benefit and suitability questions as required by Colorado insurance law.

Issue E4: Failure to provide a provision that allows for a fixed settlement option.

Regulation 4-1-3, effective July 1, 1994, Variable Life Insurance Policies, promulgated under the authority of Sections 10-1-109 and 10-7-405, C.R.S., states:

VII. Insurance Policy Requirements

C. Mandatory Policy Provisions:

Every variable life insurance policy shall contain at least the following:

14. if settlement options are provided, at *least one such option shall be on a fixed basis* (emphasis added).

It appears that the Company is not in compliance with the requirements of Colorado insurance law in that its forms do not state that one of the settlement options available for payment shall be a fixed option. The Company's forms state:

DEATH BENEFIT PAYMENT

The Death Benefit payable on the Insured's death will be paid in a lump sum unless the Owner elects to receive all or a portion of the Death Benefit Proceeds under a settlement option that the Company is then offering.

Form

Individual Flexible Premium Variable Life Insurance Policy/J355c

Individual Flexible Premium Variable Life Insurance Policy/J350a

Dated

(98)

(98)

Recommendation No. 4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-3. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its forms to indicate that a fixed settlement option is provided as required by Colorado insurance law.

Issue E5: Failure to provide full disclosure to the policy owner regarding the assets of the separate account and the liability of the general account.
--

Regulation 4-1-3, effective July 1, 1994, Variable Life Insurance Policies, promulgated under the authority of Sections 10-1-109 and 10-7-405, C.R.S., states:

VI. Insurance Policy Requirements

C. Mandatory Policy Provisions:

Every variable life insurance policy shall contain at least the following:

5. a provision designating the separate account(s) to be used and stating that:
 - a. the assets of such separate account(s) shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account.

It appears that the Company is not in compliance with Colorado insurance law in that its variable life insurance policy forms contain a provision that is less specific with regard to the assets of the separate account and the liability of the general account than required by Colorado insurance law. This provision fails to provide full disclosure to the policy owner regarding the Company's use of the separate account. The Company's disclosure, as noted above, is too general in nature to meet the specific disclosure requirements under Colorado insurance law. The Company's forms state:

Series Account – the segregated investment account established by the Company as a separate account under Colorado law named the COLI VUL-2 Series Account. It is registered as a unit investment trust under the Investment Company Act of 1940, as amended.

The Company owns the assets in the Series account. The investments held in the Series Account provide variable life insurance benefits under this policy and the *Series Account is used for other purposes permitted by applicable laws and regulations* [emphasis added]. This account is kept separate from the general account and other series accounts the Company may have.

And;

Series Account – one of the accounts into which Premiums may be paid under this policy, net of policy fees and charges described herein. The Company owns the assets in the Series Account. The investments held in the Series Account provide variable life insurance benefits under this policy and the *Series Account is used for other purposes permitted by applicable laws and regulations* [emphasis added]. This account is kept separate from the general account and other series accounts the Company may have.

The Series Account was established by the Company as a separate account under Colorado law. The name of the separate account is the COLI VUL-1 Series Account. It is not treated as an investment company under Federal securities laws. It is not registered with the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940, as amended.

Form

Individual Flexible Premium Variable Life Insurance Policy/J355c

Individual Flexible Premium Variable Life Insurance Policy/J350a

Dated

(98)

(98)

Recommendation No. 5:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-3. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its forms to fully disclose the Company's use of the separate account as required by Colorado insurance law.

Issue E6: Failure to provide an authorization to disclose nonpublic personal health information that complies with Colorado insurance law.

Regulation 6-4-1, amended effective July 1, 2001, Privacy of Consumer Financial and Health Information, promulgated under the authority of Sections 10-1-108, 10-1-109 and 10-5-17, 10-16-109, and 10-16-401(o), C.R.S., states:

Section 18. Authorizations

- A. A valid authorization to disclose nonpublic personal health information pursuant to this Article V shall be in written or electronic form and shall contain all of the following:
- (1) The identity of the consumer or customer who is the subject of the nonpublic personal health information;
 - (2) A general description of the types of nonpublic personal health information to be disclosed;
 - (3) General description of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure, how the information will be used and *a prohibition against redisclosure or reuse of the disclosed information*;
 - (4) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and
 - (5) Notice of the length of time for which the authorization is valid and that *the consumer or customer may revoke the authorization at any time and the procedure for making a revocation*.
- B. An authorization for the purposes of this Article V shall specify a length of time for which the authorization shall remain valid, *which in no event shall be more than twenty-four (24) months*. [Emphasis added.]

It appears that the Company is not in compliance with Colorado insurance law in that its “Authorization to Obtain and Disclose Information” disclosure contains a length of time that the authorization remains valid that is longer than allowed by Colorado insurance law. Additionally, the authorization does not contain a provision notifying the subject of the disclosure of nonpublic health information of the right to revoke the authorization at any time, and the procedure for doing so. Nor does it contain a prohibition against redisclosure or reuse of the disclosed information as required under Colorado insurance law. The Company’s forms state:

AUTHORIZATION TO OBTAIN AND DISCLOSE INFORMATION

The Great-West Life Assurance Company (Great-West Life) or Great-West Life & Annuity Insurance Company (Great-West Life & Annuity), its reinsurers, insurance support organizations, and their authorized representative, may obtain medical and other information in order to evaluate my (our) application for life insurance. Any physician, practitioner, hospital, clinic, other medical or medically related facility, the Veterans Administration, the Medical Information Bureau, Inc., my employer and consumer reporting agency, credit reporting agency or insurance company who possesses information of care, treatment or advice of me or my children may furnish such information to Great-West Life or Great-West Life & Annuity or their representatives upon presenting this authorization or a photocopy.

This authorization includes information about drugs, alcoholism or mental illness.

Great-West Life or Great-West Life & Annuity or their reinsures may make a brief report regarding me or my children to other companies to whom I have applied or may apply.

This authorization will be valid from the date signed for a period of two and one-half years.

I have read this authorization and understand I have the right to receive a copy. I have received the Notice of Insurance Information Practices.

I consent to a consumer report containing personal or credit information or both that may be requested in connection with my application. [Emphases added.]

Recommendation No. 6:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 6-4-1. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its “Authorization to Obtain and Disclose Information” form to ensure compliance with Colorado insurance law.

<p><u>UNDERWRITING</u> <u>NEW BUSINESS/REPLACEMENTS</u> <u>FINDINGS</u></p>
--

Issue G1: Failure, in some instances, to provide a replacement notice that complies with Colorado insurance law.

Regulation 4-1-4, amended effective July 1, 2001, Replacement Of Life Insurance Policies And Annuities, promulgated under the authority of §§10-1-109 and 10-3-110(1), C.R.S., states:

Section 4. Definitions

- G. “Producer,” for the purpose of this regulation, shall be defined to include agents, brokers and producers.

Section 5. Duties of Producers

- B. If the applicant answered “yes” to the question regarding existing coverage referred to in Subsection A, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or other substantially similar form which is not less favorable in any respect to the insured. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.
- C. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

Section 6. Duties of Insurers that Use Producers

Each insurer shall:

- D. *Require with each application for life insurance or annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A; [Emphasis added.]*

Section 7. Duties of Replacing Insurers that Use Producers

- A. Where a replacement is involved in the transaction, the replacing insurer shall:
- (3) Be able to produce copies of the notification regarding replacement required in Section 5B, indexed by producer, for at least five (5) years or until the next regular examination by the insurance department of a company’s state of domicile, whichever is later; and

Section 9. Duties of Insurers with Respect to Direct Response Solicitations

- A. In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement in Appendix B, or other substantially similar form which is no less favorable in any respect to the insured.
- B. If the insurer has proposed the replacement or *if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:*
- (1) *Provide to applicants or prospective applicants with the policy or contract and notice, as described in Appendix C, or other substantially similar form which is not less favorable in any respect to the insured.* The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and [Emphases added.]

LIFE REPLACEMENT FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
40	40	33	83%

The examiners reviewed the entire population of forty (40) life replacement files for the examination period of January 1, 2003 to December 31, 2003. In thirty-three (33) instances the Company was not in compliance with Colorado insurance law. In five (5) instances the transaction involved a producer and the Company failed to obtain both the agent and insured signatures on a compliant form. In twenty-eight (28) instances the transaction was a result of direct response solicitation, the applicant indicated a replacement, and the Company failed to provide a compliant notice regarding replacements.

Thirty (30) of the files reviewed contained a variation of form number X300BB-DR. These forms complied with a previous version of Regulation 4-1-4, but do not comply with the current version of Regulation 4-1-4 which was repealed and repromulgated effective July 1, 2001. Three (3) files did not contain a copy of any replacement notice.

ANNUITY REPLACEMENT FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
34	34	30	88%

The examiners reviewed the entire population of thirty-four (34) annuity replacement files for the examination period of January 1, 2003 to December 31, 2003. In thirty (30) instances the Company was not in compliance with Colorado insurance law in that it failed to either provide or maintain a compliant notice regarding replacements.

Thirty-three (33) of the thirty-four (34) files reviewed the contained a variation of form number X300BB-DR (no version date). These forms complied with a previous version of Regulation 4-1-4, but do not comply with the current version of Regulation 4-1-4 which was repealed and repromulgated effective July 1, 2001.

Additionally, the examiners located one version of the above form, X-300BB-2002c, in four (4) of the files reviewed. These four (4) files are not included in the above exception number. In all four (4) of these files a version of the non-compliant form was sent to the purchaser first and was subsequently followed up with a letter containing language similar to the following: “the state replacement form that we received has recently been updated. Enclosed, you will find the correct state replacement form and a postage paid envelope for your convenience”. This indicates that a compliant form was available for use during the examination period but that the Company failed to ensure that it was being used on a consistent basis.

Recommendation No. 7:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-4. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that replacement forms that comply with Colorado insurance law are provided to consumers.

Issue G2: Providing, in some instances, misleading information regarding the free-look period allowed under a replacement policy.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
 - (a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:
 - (I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; or

LIFE REPLACEMENT FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
40	40	19	48%

The examiners reviewed the entire population of forty (40) life replacement files for the examination period of January 1, 2003 to December 31, 2003. In nineteen (19) instances the Company provided both form INET 01 and form J296-A to the policy owner. This is misleading in that INET 01 provides the required thirty (30) day replacement right to return and J296-A only provides fifteen (15) days.

The Company's form number INET 01 9/00 states in paragraph three:

As a reminder, this policy provides an excellent combination of benefits and value.

- Low rates are locked in for your full policy term.
- If you become terminally ill after your policy is issued, you can get a portion of your policy benefits during your illness to use however you choose. Of course, any amounts paid are deducted from the final death benefit.**
- *30-day risk-free review – if you're not completely satisfied with your policy for any reason, just return it within 30 days of policy receipt to cancel coverage and receive a full refund on any premiums paid.*[Emphasis added.]

Additionally, the Company's 'Delivery Receipt', form number J296-A (98) states:

I HEREBY ACKNOWLEDGE THAT I HAVE RECEIVED THE ABOVE REFERENCED GREAT-WEST LIFE & ANNUITY POLICY ON THIS ____ DAY OF ____ YEAR____. *THE FIFTEEN (15) DAY RIGHT TO EXAMINE WILL BEGIN EFFECTIVE THE DATE THAT THIS RECEIPT IS SIGNED BY THE INSURED.*
[Emphasis added.]

Recommendation No. 8:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 10-3-1104. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that consumers are not provided misleading information with regard to the free-look period allowed under the replacement policy.

Issue G3: Failure, in some instances, to allow credit under the replaced policy or contract's incontestability and suicide period on an internal replacement.

Regulation 4-1-4, amended effective July 1, 2001, Replacement Of Life Insurance Policies And Annuities, promulgated under the authority of §§10-1-109 and 10-3-110(1), C.R.S., states:

Section 4. Definitions

- G. "Producer," for the purpose of this regulation, shall be defined to include agents, brokers and producers.

Section 7. Duties of Replacing Insurers that Use Producers

- A. In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control *allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract.* With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of the existing policy values to fund the new policy or contract.
[Emphasis added.]

LIFE REPLACEMENT FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
40	40	6	15%

The examiners reviewed the entire population of forty (40) life replacement files for the examination period of January 1, 2003 to December 31, 2003. During their review the examiners determined that six (6) of the life replacement files involved an internal replacement. The Company is not in compliance with Colorado insurance law in that in all six (6) instances the Company should have allowed credit under the replaced policy or contract's incontestability and suicide period and did not.

Recommendation No. 9:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-4. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that in the case of an internal replacement, credit is allowed under the replaced policy or contract's incontestability and suicide period in compliance with Colorado insurance law.

Issue G4: Failure, in some instances, to notify an existing insurer of an intended replacement within the time period allowed by Colorado insurance law.

Regulation 4-1-4, amended effective July 1, 2001, Replacement Of Life Insurance Policies And Annuities, promulgated under the authority of §§10-1-109 and 10-3-110(1), C.R.S., states:

Section 7. Duties of Replacing Insurers that Use Producers

A. Where a replacement is involved in the transaction, the replacing insurer shall:

(2) Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer; [Emphasis added.]

Section 9. Duties of Insurers with Respect to Direct Response Solicitations

C. If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

- (1) Provide to applicants or prospective applicants with the policy or contract and notice, as described in Appendix C, or other substantially similar form which is not less favorable in any respect to the insured. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self- addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and
- (2) Comply with the requirements of 7A(2), if the applicant furnishes the names of the existing insurers, and the requirements of 7A(3), 7A(4) and 7B.

LIFE REPLACEMENT FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
40	40	33	83%

The examiners reviewed the entire population of forty (40) life replacement files for the examination period of January 1, 2003 to December 31, 2003. In thirty-four (34) instances the Company should have mailed a notice to the existing insurer(s) that their policy may be affected. In thirty-three (33) instances the Company was not in compliance with Colorado insurance law. In nine (9) instances the Company did not send the notice within five (5) business days as required and in twenty-four (24) instances no notice was sent at all.

ANNUITY REPLACEMENT FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
34	34	5	15%

The examiners reviewed the entire population of thirty-four (34) annuity replacement files for the examination period of January 1, 2003 to December 31, 2003. In thirty-three (33) instances the Company should have mailed a notice to the existing insurer(s) that their policy may be affected by a replacement. In five (5) of these thirty-three (33) instances, the Company was not in compliance with Colorado insurance law. In four (4) instances the Company did not send the notice within five (5) business days as required and in one (1) instance no notice was sent at all or the documents were not maintained for examiner review.

Recommendation No. 10:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-4. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that notice regarding replacement is sent to the existing insurer(s) within the timeframe required by Colorado insurance law.

Issue G5: Failure, in some instances, to provide the required thirty (30) day right to return the replacing policy or contract.

Regulation 4-1-4, amended effective July 1, 2001, Replacement Of Life Insurance Policies And Annuities, promulgated under the authority of §§10-1-109 and 10-3-110(1), C.R.S., states:

Section 7. Duties of Replacing Insurers that Use Producers

B. Where a replacement is involved in the transaction, the replacing insurer shall:

- (4) *Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract; such notice may be included in Appendix A or C.*
[Emphasis added.]

Section 9. Duties of Insurers with Respect to Direct Response Solicitations

- A. If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:
- (1) Provide to applicants or prospective applicants with the policy or contract and notice, as described in Appendix C, or other substantially similar form which is not less favorable in any respect to the insured. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and
- (2) Comply with the requirements of 7A(2), if the applicant furnishes the names of the existing insurers, and the requirements of 7A(3), 7A(4) and 7B.

ANNUITY REPLACEMENT FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
34	34	7	21%

The examiners reviewed the entire population of thirty-four (34) annuity replacement files for the examination period of January 1, 2003 to December 31, 2003. In seven (7) instances the Company was not in compliance with Colorado insurance law in that the Company provided the purchaser with form J434bIND (96) which only allows for fifteen (15) days to return the policy.

Recommendation No. 11:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-4. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures and forms to ensure that the consumer is provided thirty (30) days to return a replacement policy or contract in compliance with Colorado insurance law.

<p style="text-align: center;"><u>UNDERWRITING</u> <u>CANCELLATIONS /DECLINATIONS/TERMINATIONS</u> <u>FINDINGS</u></p>

Issue H1: Failure to send a letter and notice pertaining to the replacement of an existing policy.

Repromulgated Regulation 4-1-4, Replacement Of Life Insurance And Annuities, promulgated under the authority of §§10-1-109 and 10-3-1110(1), Colorado Revised Statutes (C.R.S.), states:

Section 8. Duties of the Existing Insurer

Where a replacement is involved in the transaction, the existing insurer shall:

- B. Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner.
- C. Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

TERMINATED ANNUITY FILE SAMPLE

Population	Sample Size	Number of Exceptions	Percentage to Sample
18	17	17	100%

The examiners reviewed the entire population of eighteen (18) annuity files terminated during the examination period of January 1, 2003 to December 31, 2003. It appears that in seventeen (17) instances the Company was not in compliance with Colorado insurance law in that they failed to send a letter and notice pertaining to the replacement of the existing policy. All seventeen of these terminations resulted from a policyholder requested replacement. Records regarding the termination of the 18th file were not provided for review and therefore the examiners were unable to determine if the Company was in compliance with the above regulation or if this termination was even the result of a policyholder replacement.

Recommendation No. 12:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Regulation 4-1-4. In the event the Company is unable to show such proof, it should provide evidence to the Division of Insurance that it has revised its procedures to ensure that notices and letters pertaining to the replacement of an existing policy are provided as required by Colorado insurance law.

SUMMARY OF ISSUES AND RECOMMENDATIONS

ISSUES	Rec. No.	Page No.
UNDERWRITING - CONTRACT FORMS		
Issue E1: Failure, in some instances, to include a fraud statement, or to include a fraud statement that is substantially similar to that required by Colorado insurance law.	1	17
Issue E2: Failure to provide an incontestability provision that addresses non-payment of premiums.	2	19
Issue E3: Failure to provide the required statements relating to the death benefit and suitability questions as required by Colorado insurance law.	3	21
Issue E4: Failure to provide a provision that allows for a fixed settlement option.	4	22
Issue E5: Failure to provide full disclosure to the policy owner regarding the assets of the separate account and the liability of the general account.	5	24
Issue E6: Failure to provide an authorization to disclose nonpublic personal health information that complies with Colorado insurance law.	6	26
UNDERWRITING – NEW BUSINESS/REPLACEMENTS		
Issue G1: Failure, in some instances, to provide a replacement notice that complies with Colorado insurance law.	7	30
Issue G2: Providing, in some instances, misleading information regarding the free-look period allowed under a replacement policy.	8	32
Issue G3: Failure, in some instances, to allow credit under the replaced policy or contract’s incontestability and suicide period on an internal replacement.	9	33
Issue G4: Failure, in some instances, to notify an existing insurer of an intended replacement within the time period allowed by Colorado insurance law.	10	35
Issue G5: Failure, in some instances, to provide the required thirty (30) day right to return the replacing policy or contract.	11	37
UNDERWRITING – CANCELLATIONS/DECLINATIONS/TERMINATIONS		
Issue H1: Failure to send a letter and notice pertaining to the replacement of an existing policy.	12	39

State Market Conduct Examiners

**Jeffory A. Olson, CIE, AIRC, ALHC
David M. Tucker, AIE, FLMI, ACS
Paula M. Sisneros, AIS**

For

**The Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, Colorado 80202**

participated in this examination and in the preparation of this report.